



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/166748

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Douglas County Department of Human Services in regard to Child Care, a hearing was held on July 23, 2015, at Superior, Wisconsin.

The issue for determination is whether the petitioner's income exceeds the limit for Child Care Benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Tom Ostrander

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Douglas County.
2. The petitioner denied the petitioner's application for Child Care Benefits to care for her two-year-old niece on May 20, 2015.
3. The petitioner's household consists of her and her niece.

4. The petitioner does not have guardianship of her niece.
5. The petitioner earns \$2,752 as the business manager of a [REDACTED]

DISCUSSION

The petitioner cares for her sister's two-year-old child. Her sister is on her way back to prison and the child's father is in a halfway house. Both are heroin addicts. The petitioner eats at home, has no television, and does not go out at night. She lacks legal guardianship of the child and the benefits that would bring. She testified that she has not obtained guardianship because the child and the child's parents are from Maryland and she cannot afford another flight there for the court proceedings. Understandably, she seeks help with her childcare costs. The county agency denied her application for Child Care Benefits because she makes too much money.

The income limit for new applicants to the Child Care program is usually 185% of the federal poverty level and based upon the income of the household in which the child lives. Wis. Stat. § 49.155(1m)(c)1. For a two-person household, the size of the petitioner's, this is \$2,455.88. *Medicaid Eligibility Handbook*, § 39.5. Her income is \$2,752 per month, or about 207% of the federal poverty level. There is a way for her to receive benefits. The income limit for someone caring for a child under a court order while receiving or on the waitlist for Kinship Care benefits available under Wis. Stat. § 48.57, is 200% of the federal poverty level and is based on the income of the child's parent's rather than guardian's. Wis. Stat. § 49.155(1m)(c)1h. (Kinship Care pays \$220 per month per child to a qualified relative who cares for a child he bears no legal responsibility to support Wis. Admin. Code, § 58.03(12).) The petitioner is on the waitlist for Kinship Care, but, as noted, she does not have legal guardianship of the child. I cannot rewrite the Child Care rules to suit her situation. Because her income exceeds 185% of the federal poverty level, I must uphold the agency's denial.

But she should not give up on obtaining guardianship. There are uniform laws throughout the country pertaining to guardianship and where a child custody matter can be heard. In Wisconsin these are found in the Wisconsin statutes at chapter 822 and in section 48.977. I have only a limited and distant background in family and do not know how these laws apply to her situation. I suggest that she seek help from a volunteer legal group such as Judicare. Its telephone number is (715) 842-1681 and its email address is info@judicare.org.

CONCLUSIONS OF LAW

The county agency correctly denied Child Care Benefits to the petitioner because her income exceeds the program's limit.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

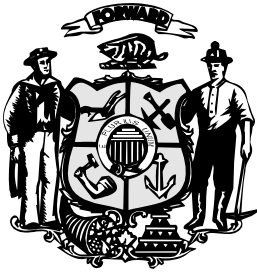
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of July, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 28, 2015.

Douglas County Department of Human Services
Child Care Benefits